

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SWITCH, LTD., a Nevada limited liability company,

Case No. 2:18-cv-00738-KJD-CWH

ORDER

Plaintiff,

V.

SWITCH, INC., a Washington corporation,

Defendant.

Before the Court is Defendant Switch Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue (#5) to which Plaintiff Switch, LTD. responded (#7), and Defendant replied (#8). Also before the Court is Plaintiff's Motion for Leave to Conduct Jurisdictional Discovery (#17) to which Defendant responded (#18), and Plaintiff replied (#19).

In this trademark infringement action, Plaintiff Switch, LTD., a Nevada company, alleges that Defendant Switch, Inc., a Washington corporation, has employed a confusingly similar name and logo to market its services thereby decreasing the value of Plaintiff's trademarks and other intellectual property. (#7, at 5). Defendant has not yet answered the complaint but has instead moved to dismiss for lack of personal jurisdiction. (#5). It claims that its contacts with Nevada are insufficient to subject the company to personal jurisdiction in this Court. Id. at 6–7. Plaintiff admits there is not general personal jurisdiction over Defendant in Nevada but counters that Defendant has sufficient minimum contacts with the state to confer specific personal jurisdiction. (#7, at 3–4). Specifically, Plaintiff alleges that Defendant has attended tradeshows in Nevada, has marketed its products using the hashtag “#LasVegas,” has targeted Nevada with its website, and has derived revenue from Nevada-based clients. Id. at 2. If true, Defendant would indeed be

1 subject to personal jurisdiction in Nevada.

2 Defendant's CEO, Chris Hopen, denies that the company has received revenue from
3 Nevada-based companies or that it has targeted the state in any way. (#5, Exh. 1). Hopen has
4 provided two declarations to that effect. (#5, Exh. 1; #8, Exh. 1). In response, Plaintiff submitted
5 evidence from Defendant's own website that suggests Defendant has indeed provided its
6 products and services to at least one Nevada company, Zappos. (#7, Exh. A). On that basis,
7 Plaintiff asks the Court to deny the motion to dismiss or, in the alternative, to allow limited
8 jurisdictional discovery to probe the extent of Defendant's commercial contacts within the state
9 of Nevada.

10 The Court has broad discretion to grant leave to conduct jurisdictional discovery. Laub v.
11 U.S. Dept. of the Interior, 342 F.3d 1080, 1093 (9th Cir. 2003). It should allow such discovery
12 where the facts supporting jurisdiction are unclear or controverted or where discovery would
13 assist the Court's jurisdictional analysis. Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir.
14 2008). While Plaintiff need not make a *prima facie* case of personal jurisdiction to warrant
15 discovery, it must demonstrate more than a "hunch" that the discovery will uncover facts
16 relevant to Defendant's ties to Nevada. Id.; Hall v. United States, No. 16-cv-02395-BAS-RBB,
17 2017 WL 3252240, *4 (S.D. Cal. July 31, 2017).

18 Here, Plaintiff has presented evidence from Defendant's own website that Defendant has
19 interacted with Nevada residents to market its products and services. If proven, that fact would
20 both contradict Defendant's sworn declaration and likely subject Defendant to personal
21 jurisdiction in Nevada. As a result, the Court grants Plaintiff's Motion to Conduct Jurisdictional
22 Discovery (#17) subject to the limitations enumerated below. It also denies without prejudice
23 Defendant's Motion to Dismiss (#5) pending discovery.

24 Next, the Court must determine the scope of jurisdictional discovery it will allow.
25 Plaintiff seeks discovery to explore four of Defendant's potential contacts with Nevada: (1)
26 whether Defendant's marketing and advertising targeted Nevada (#17, at 5–6); (2) whether
27 Defendant's CEO Chris Hopen attended the MONEY 20/20 Convention in Las Vegas in his
28 capacity as CEO (id. at 6); whether Defendant has a business relationship with Nevada-based

1 Zappos sufficient to confer personal jurisdiction (*id.* at 6–7); and whether, and to what extent,
2 Defendant’s website specifically targets Nevada residents (*id.* at 7). To that end, Plaintiff asks
3 that it “be permitted to send written discovery requests,” to “depose [CEO] Chris Hopen,” and to
4 “send a subpoena to Zappos to learn the true details of the relationship between Defendant and
5 Zappos.” *Id.* at 5, 6.

6 Defendant does not necessarily oppose Plaintiff’s request for jurisdictional discovery.
7 (#18, at 1). It does, however, request that the Court limit the scope of that inquiry to the
8 discovery Plaintiff has requested, namely: written discovery requests to probe jurisdictional
9 issues, the deposition of CEO Hopen, and one third-party subpoena to Zappos to explore the
10 relationship between the two entities. *Id.* at 1–2.¹

11 Due to the unclear and controverted nature of Defendant’s ties to Nevada, limited
12 discovery will assist the Court in its jurisdictional analysis. See Boschetto, 539 F.3d at 1020
13 (discovery is appropriate where the facts bearing on jurisdiction are unclear or controverted).
14 However, the Court sees no reason to expand discovery outside of what Plaintiff requested in its
15 original motion. Accordingly, the Court opens jurisdictional discovery for ninety (90) days.
16 During that time (1) Plaintiff may send written discovery to explore whether Defendant’s
17 contacts with Nevada—including its web presence and advertising—are sufficient to subject
18 Defendant to personal jurisdiction in Nevada; (2) Plaintiff may depose Defendant’s CEO Chris
19 Hopen; and (3) Plaintiff may subpoena Zappos to evaluate whether it has a business relationship
20 with Defendant and whether that relationship is enough to confer personal jurisdiction.

21 If it wishes, Defendant may renew its motion to dismiss within fourteen (14) days of the
22 close of jurisdictional discovery. Plaintiff shall respond to the renewed motion to dismiss in
23 fourteen (14) days, and Defendant may reply in seven (7) days. The Court is cognizant of
24 Plaintiff’s concern that it might uncover additional contacts between Defendant and the forum
25 state during the course discovery. If the Plaintiff discovers such information, the parties are to
26 meet and confer to facilitate further discovery. See Fed. R. Civ. P. 26(f); LR 26-7. If after the

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28 ¹ Defendant also requests that the Court delay discovery until after a scheduled settlement conference. (#18, at 1). To the Court’s knowledge, that settlement conference was scheduled for December 12, 2018. (#19, at 2). The Court assumes that conference has occurred and that it need not delay discovery any longer.

1 meet and confer the parties are unable to agree, they may petition the magistrate judge for
2 appropriate relief, including expanding the time limitations and scope of this order.

3 Accordingly, it is **HEREBY ORDERED** that Plaintiff's Motion for Leave to Conduct
4 Jurisdictional Discovery (#17) is **GRANTED**;

5 **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (#5) is **DENIED**
6 with leave to refile within fourteen (14) days of the close of jurisdictional discovery;

7 **IT IS FURTHER ORDERED** that the matter is hereby referred to the Magistrate Judge
8 assigned to this case for the resolution of any requests related to the jurisdictional discovery.

9 Dated this 12th day of March, 2019.



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11 Kent J. Dawson
12 United States District Judge
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